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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2640 and 2641 of 2013

Janaki .. Appellant/Petitioner in  
C.M.A.No.2640 of 2013

Madhu .. Appellant/Petitioner in  
C.M.A.No.2641 of 2013

Vs.

1.L.Saravanan

2.The Branch Manager  
The National Insurance Company Limited  
Branch Office  
88-F, Bye pass Road  
Dharmapuri Town and District.

3.P.Kumaresan

4.The Branch Manager  
United India Insurance Company Limited  
Branch Office, No.11-A, M.C.Road  
Ambur Town, Vaniyambadi Taluk  
Vellore District.

.. Respondents/Respondents in  
both C.M.As.

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.10.2010 made in M.C.O.P.Nos.1191 and 1192 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

In both CMAs.

For Appellant : Mr.K.Prasanna  
for Mr.Mukund R.Pandiyan

For R1 : No appearance

For R2 : Mrs.R.Sreevidhya

For R4 : Mr.M.J.Vijayaraghavan



## C O M M O N    J U D G M E N T

This matter is heard through "Video-Conferencing".

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These Civil Miscellaneous Appeals are filed challenging the portion of the award fixing 25% contributory negligence on the part of the appellants as well as for enhancement of compensation granted by the Tribunal in the award dated 07.10.2010 made in M.C.O.P.Nos.1191 and 1192 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellants who are the claimants filed M.C.O.P.Nos.1191 and 1192 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri, claiming a sum of Rs.3,00,000/- and Rs.5,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 25.06.2004.

4.According to the appellants, on the date of accident, i.e., on 25.06.2004 at about 9.30 hours, while they were travelling in Eicher tempo van bearing Registration No.TN-39-L-8169 belonging to the 3<sup>rd</sup> respondent insured with the 4<sup>th</sup> respondent along with goods from Karimangalam to Palacode, near Bellarampatti Town, the Bajaj three wheeler minidor pickup van bearing Registration No.TN-29-F-0208 belonging to the 1<sup>st</sup> respondent insured with the 2<sup>nd</sup> respondent, which was covered with tarpaulin in the rear portion, was driven by its driver in a rash and negligent manner, due to which, the top of the said Bajaj three wheeler minidor pickup van, hit the appellants' right hands, who were standing behind the said Eicher tempo van and caused the accident. In the accident, the appellants in both the appeals sustained multiple injuries all over the body. Therefore, they filed the above claim petitions claiming compensation against the respondents.

5.The respondents 1 and 3, owners of Bajaj three wheeler minidor pickup van and Eicher tempo van respectively, remained exparte before the Tribunal.

6.The 2<sup>nd</sup> respondent/Insurance Company, insurer of the Bajaj three wheeler minidor pickup van filed common counter statements denying the averments made in the claim petitions and stated that the 1<sup>st</sup> respondent, owner of the Bajaj three wheeler minidor pickup van remained exparte and hence, denied the negligence on



the part of the driver of the Bajaj three wheeler minidor pickup van. The accident has occurred only due to rash and negligent driving by the driver of the Eicher tempo van belonging to the 3<sup>rd</sup> respondent. Therefore, the 2<sup>nd</sup> respondent/Insurance Company is not liable to pay any compensation to the appellants. The 2<sup>nd</sup> respondent has also denied the age, avocation, income and nature of injuries sustained by the appellants in both the appeals. In any event, the compensation claimed by the appellants are excessive and prayed for dismissal of the claim petitions.

7.The 4<sup>th</sup> respondent/Insurance Company, insurer of the Eicher tempo van filed counter statements denying the averments made in the claim petitions and stated that the accident has occurred only due to rash and negligent driving by the driver of the Bajaj three wheeler minidor pickup van belonging to the 1<sup>st</sup> respondent. The appellants travelled in the goods vehicle as unauthorised passengers. More than 50 passengers travelled in the goods vehicle at the time of accident, which is in violation of policy conditions. Therefore, the 4<sup>th</sup> respondent/Insurance Company is not liable to pay any compensation to the appellants. The 4<sup>th</sup> respondent has also denied the age, avocation, income and nature of injuries sustained by the appellants in both the appeals. In any event, the compensation claimed by the appellants are excessive and prayed for dismissal of the claim petitions.

8.Before the Tribunal, the appellants in both C.M.A.Nos.2640 and 2641 of 2013 examined themselves as P.W.1 & P.W.2 respectively, Dr.D.V.Gandhi, was examined as P.W.3 and 13 documents were marked as Exs.P1 to P13. The respondents 2 and 4/Insurance Companies did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of the Bajaj three wheeler minidor pickup van belonging to the 1<sup>st</sup> respondent as well as the Eicher tempo van belonging to the 3<sup>rd</sup> respondent, fixed 25% contributory negligence on the part of the appellants and 75% contributory negligence on the part of the drivers of both Bajaj three wheeler minidor pickup van belonging to the 1<sup>st</sup> respondent as well as the Eicher tempo van belonging to the 3<sup>rd</sup> respondent, awarded Rs.92,600/- and Rs.94,200/- as total compensation out of which, the appellants in both the appeals are entitled to Rs.69,450/- and Rs.70,650/- being 75% of the compensation respectively and directed the 2<sup>nd</sup> respondent/Insurance Company being insurer of the said Bajaj three wheeler minidor pickup van as well as the 3<sup>rd</sup> respondent, owner of Eicher tempo van to pay Rs.34,725/- and Rs.35,325/- each, i.e., 50 : 50 of the award granted as compensation to the



appellants respectively and exonerated the 4<sup>th</sup> respondent/Insurance Company being insurer of the Eicher tempo van as the 3<sup>rd</sup> respondent, owner of the Eicher tempo van has violated the policy conditions.

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10.The appellants have come out with the present appeals challenging the portion of the award fixing 25% contributory negligence on the part of the appellants as well as for enhancement of compensation.

11.The learned counsel appearing for the appellants contended that while both the appellants were travelling in the Eicher van bearing Registration No.TN-39-L-8169 belonging to the 3<sup>rd</sup> respondent, the driver of the Bajaj three wheeler minidor pick up van bearing Registration No.TN-29-F-0208 belonging to the 1<sup>st</sup> respondent, which covered by tarpaulin in the rear portion, driven by its driver in a rash and negligent manner, due to which, the top of Bajaj three wheeler minidor pick up van hit the appellants' right hands, who were standing behind the Eicher tempo van and caused the accident. In the accident, both the appellants sustained severe injuries in their right hands. The accident has occurred only due to rash and negligent driving by the driver of the Bajaj three wheeler minidor pick up van belonging to the 1<sup>st</sup> respondent. The respondents 1 and 2, owner and insurer of the Bajaj three wheeler minidor pick up van respectively are liable to pay compensation. The Tribunal without considering the facts and circumstances of the case and evidence of the appellants, erroneously fixed 25% contributory negligence on the part of the appellants.

12.The learned counsel further contended that the appellants travelled in the 3<sup>rd</sup> respondent's vehicle and they are third parties to the accident. The Tribunal ought to have directed the 4<sup>th</sup> respondent to pay 50% of the compensation awarded by the Tribunal and recover the same from the 3<sup>rd</sup> respondent. Both the appellants sustained grievous injuries and they could not continue their work as they were doing earlier. The Tribunal ought to have adopted multiplier method to award compensation. The appellants examined P.W.3/Doctor to prove the nature of injuries and disability suffered by them. P.W.3/Doctor examined the appellants and certified that they suffered 40% disability. The Tribunal erroneously reduced the percentage of disability to 25% in the absence of contra evidence let in by the respondents. The total compensation awarded by the Tribunal are meagre. The Tribunal failed to award compensation towards attendant charges, extra nourishment and loss of amenities and prayed for setting aside 25% contributory negligence on the part of the appellants and for a direction to the 4<sup>th</sup> respondent to pay 50% of the compensation awarded and for enhancement of compensation.



13. The learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the appellants were standing in the Eicher tempo van holding their hands outside the said van and invited the accident. The driver of Bajaj three wheeler minidor pick up van belonging to the 1<sup>st</sup> respondent is not responsible for the accident. F.I.R. was registered only against the driver of the Eicher tempo van belonging to the 3<sup>rd</sup> respondent in which the appellants travelled. The Tribunal erroneously fixed 50% negligence on the part of the driver of the Bajaj three wheeler minidor pickup van and liability on the part of the respondents 1 and 2. In any event, the Tribunal has rightly fixed 25% contributory negligence on the appellants. The appellants have not made out any case for setting aside 25% negligence and for enhancement of compensation and prayed for dismissal of the appeals.

14. The learned counsel appearing for the 4<sup>th</sup> respondent/Insurance Company contended that the Eicher tempo van belonging to the 3<sup>rd</sup> respondent is a goods vehicle. The appellants travelled in the goods vehicle along with 50 persons as unauthorised passengers and hence, they are not entitled to any compensation from the 4<sup>th</sup> respondent and the 4<sup>th</sup> respondent is not liable to pay any compensation to the appellants. The Tribunal considering the entire materials, rightly exonerated the 4<sup>th</sup> respondent from its liability and prayed for dismissal of the appeals against the 4<sup>th</sup> respondent.

15. Though notice has been served on the 1<sup>st</sup> respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

16. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company and the 4<sup>th</sup> respondent/Insurance Company and perused the entire materials on record.

17. From the materials on record, it is seen that it is the contention of the appellants that the accident has occurred while the appellants were travelling in the Eicher tempo van by standing on the back side, the Bajaj three wheeler minidor pick up van covering with tarpaulin driven by its driver in a rash and negligent manner, hit on the appellants' right hands and hit the tempo. In the accident, both the appellants sustained severe injuries over their right hands as mentioned in the claim petitions. To substantiate the said contention, both the appellants were examined themselves as P.W.1 and P.W.2 and marked F.I.R. as Ex.P1. The respondents did not let in any evidence. It is the contention of the 2<sup>nd</sup> respondent/Insurance

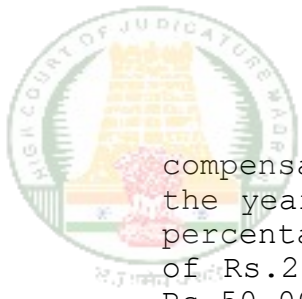


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Company that the accident has occurred only due to negligence on the part of the appellants by holding their hands outside and due to rash and negligent driving by the driver of the Eicher tempo van belonging to the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent remained exparte before the Tribunal. The 4<sup>th</sup> respondent filed counter statement stating that the accident has occurred only due to negligence on the part of the appellants as well as negligence on the part of the driver of Bajaj three wheeler minidor pick up van, the appellants are gratuitous passengers and hence the 4<sup>th</sup> respondent/Insurance Company is not liable to pay compensation. To substantiate their contention, the respondents have not let in any evidence. The Tribunal considering the evidence of P.W.1 and P.W.2 and the documents marked on behalf of the appellants, especially F.I.R., which was registered against the driver of the Eicher tempo van, held that the accident has occurred due to rash and negligent driving by both the drivers of Eicher tempo van and Bajaj three wheeler minidor pickup van, fixed 25% contributory negligence on the part of the appellants as they were keeping their hands outside their vehicle and contributed to the accident and fixed 75% on the part of both the drivers of the Bajaj three wheeler minidor pickup van and Eicher tempo van. There is no error in the award of the Tribunal fixing negligence on the part of the appellants and the drivers of both the vehicles.

18.The Tribunal considering the entire materials, has held that the appellants travelled as unauthorised passengers in the goods vehicle, the 4<sup>th</sup> respondent/Insurance Company is not liable to pay compensation to the appellants, exonerated the 4<sup>th</sup> respondent/Insurance Company and directed the respondents 1 and 2 to pay 50% of 75% of the compensation awarded, 3<sup>rd</sup> respondent to pay 50% of 75% of the award amount. There is no error in the said finding of the Tribunal warranting interference by this Court.

19.As far as quantum of compensation is concerned, the appellants examined themselves as P.W.1 and P.W.2, deposed about the nature of injuries and treatment taken by them. P.W.3/Doctor examined the appellants and certified that both the appellants suffered 40% disability. The respondents did not let in any contra evidence to the evidence of P.W.3. The Tribunal reduced the percentage of disability assessed by P.W.3/Doctor to 25% holding that assessment of disability is not based on any medical guidelines. In the absence of any contra evidence by the respondents, the appellants are entitled to compensation for 40% disability as assessed by P.W.3/Doctor. The appellants failed to prove that they suffered functional disability and lost their earning capacity. In the absence of any evidence with regard to loss of earning capacity, the appellants are not entitled to

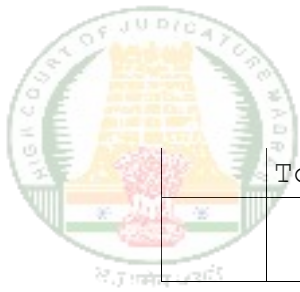


compensation by adopting multiplier method. The accident is of the year 2004 and the appellants are entitled to Rs.1,500/- per percentage of disability. The Tribunal erroneously awarded a sum of Rs.2,000/- per percentage of disability and granted a sum of Rs.50,000/- for 25% disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.60,000/- (Rs.1,500/- X 40%).

19(i).According to the appellants, they have taken treatment as in-patient in the hospital from 25.06.2004 to 03.07.2004 and marked Discharge Summaries as Exs.P2 and P7. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities, extra nourishment and damage to clothes. Both the appellants are entitled to a sum of Rs.10,000/- each towards attendant charges, Rs.10,000/- each towards loss of amenities, Rs.7,500/- each towards extra nourishment and Rs.1,000/- each towards damage to clothes. A sum of Rs.3,000/- each awarded by the Tribunal towards taxi bills are meagre and hence, the same are hereby enhanced to Rs.5,000/- each. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal in both the claim petitions are modified as follows:

C.M.A.No.2640 of 2013 (M.C.O.P.No.1191 of 2006):

| S.No | Description        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted or reduced |
|------|--------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Disability         | 50,000                          | 60,000                            | Enhanced                                          |
| 2.   | Loss of income     | 13,500                          | 13,500                            | Confirmed                                         |
| 3.   | Pain and suffering | 15,000                          | 15,000                            | Confirmed                                         |
| 4.   | Medical bills      | 11,100                          | 11,100                            | Confirmed                                         |
| 5.   | Taxi bills         | 3,000                           | 5,000                             | Enhanced                                          |
| 6.   | Extra nourishment  | -                               | 7,500                             | Granted                                           |
| 7.   | Damage to clothes  | -                               | 1,000                             | Granted                                           |
| 8.   | Attendant charges  | -                               | 10,000                            | Granted                                           |
| 9.   | Loss of amenities  | -                               | 10,000                            | Granted                                           |



|                         |        |          |                         |
|-------------------------|--------|----------|-------------------------|
| Total                   | 92,600 | 1,33,100 |                         |
| 75% of the award amount | 69,450 | 99,825   | Enhanced by Rs.30,375/- |

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C.M.A.No.2641 of 2013 (M.C.O.P.No.1192 of 2006):

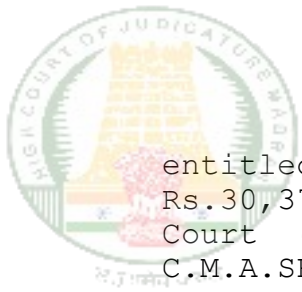
| S.No | Description             | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted or reduced |
|------|-------------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Disability              | 50,000                          | 60,000                            | Enhanced                                          |
| 2.   | Loss of income          | 13,500                          | 13,500                            | Confirmed                                         |
| 3.   | Pain and suffering      | 15,000                          | 15,000                            | Confirmed                                         |
| 4.   | Medical bills           | 12,700                          | 12,700                            | Confirmed                                         |
| 5.   | Taxi bills              | 3,000                           | 5,000                             | Enhanced                                          |
| 6.   | Extra nourishment       | -                               | 7,500                             | Granted                                           |
| 7.   | Damage to clothes       | -                               | 1,000                             | Granted                                           |
| 8.   | Attendant charges       | -                               | 10,000                            | Granted                                           |
| 9.   | Loss of amenities       | -                               | 10,000                            | Granted                                           |
|      | Total                   | 94,200                          | 1,34,700                          |                                                   |
|      | 75% of the award amount | 70,650                          | 1,01,025                          | Enhanced by Rs.30,375/-                           |

20.In the result,

(i) C.M.A.No.2640 of 2013 (M.C.O.P.No.1191 of 2006) is partly allowed and the compensation awarded by the Tribunal at Rs.92,400/- is hereby enhanced to Rs.1,33,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(ii) C.M.A.No.2641 of 2013 (M.C.O.P.No.1192 of 2006) is partly allowed and the compensation awarded by the Tribunal at Rs.94,200/- is hereby enhanced to Rs.1,34,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(iii) It is made clear that both the appellants are not



entitled for any interest for the delay period on the amount of Rs.30,375/- enhanced by this Court as per the order of this Court dated 23.07.2013 made in M.P.Nos.1, 1 of 2012 in C.M.A.SR.Nos.86136 and 86139 of 2012.

(iv) The appellants are entitled to 75% of the compensation awarded by this Court i.e., Rs.99,825/- and Rs.1,01,025/- respectively.

(v) The 2<sup>nd</sup> respondent/Insurance Company and the 3<sup>rd</sup> respondent are directed to deposit Rs.49,912.50 and Rs.50,512.50 each, i.e., 50 : 50 of the award amount now determined by this Court (i.e., 50% of 75% of award amount) along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment.

(vi) On such deposit, the appellants in both the appeals are permitted to withdraw their respective award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate  
The Motor Accident Claims Tribunal  
Krishnagiri.

2.The Section Officer  
V.R.Section, High Court, Chennai.

+2ccs to Mr.Mukund R.Pandiyan, Advocate SR.No.41125, 41126

C.M.A.Nos.2640 and 2641 of 2013

VBA(CO)  
GMY(25/08/2021)